

MEMO ENDORSED

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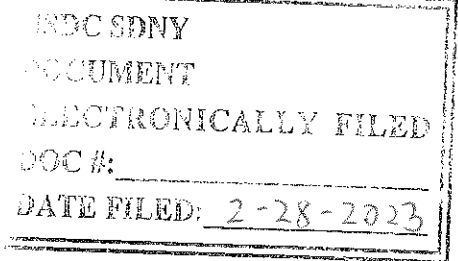
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February 27, 2023

VIA CM/ECF

Honorable Lewis A. Kaplan, U.S.D.J.
United States District Court
Southern District of New York
500 Pearl Street
New York, NY 10007



Re: *Cerveceria Modelo de México, S. de R.L. de C.V., et al. v. CB Brand Strategies, LLC, et al.*, Case No. 1:21 Civ. 01317-LAK (S.D.N.Y.)

Dear Judge Kaplan:

Defendants respectfully submit this letter motion to exclude certain evidence and argument implicated by the Court's rulings on the parties' motions *in limine* issued on February 23 and February 24. Defendants raise these issues in order to streamline the presentation of evidence and minimize objections during our trial starting this Wednesday, March 1.

1. In Light Of The Court's Ruling Excluding Evidence Of ABI's Intent, All Evidence And Argument Concerning Constellation's Alleged Intent Must Be Excluded.

The Court granted Plaintiffs' motion to exclude evidence touching on ABI's motivations for filing this lawsuit. Accordingly, all evidence and argument concerning Defendants' supposed intent or motivations in developing, launching, and selling Corona Hard Seltzer should be excluded too. (ECF No. 526 at 2); *see also Russell Publ'g Grp., Ltd. v. Brown Printing Co.*, 2014 WL 6790762, at *8 (S.D.N.Y. Dec. 2, 2014) ("Under contract law, the party's intent when breaching the contract is immaterial."). This is a breach of contract case, and the trial starting this week is about liability and liability only — a bifurcated approach that Plaintiffs themselves requested long ago. Constellation either acted within the scope of the Sublicense or it did not. Defendants' conduct prior to the release of Corona Hard Seltzer is irrelevant and prejudicial at the liability phase to the extent it speaks only to Defendants' intent. Such evidence should be excluded.

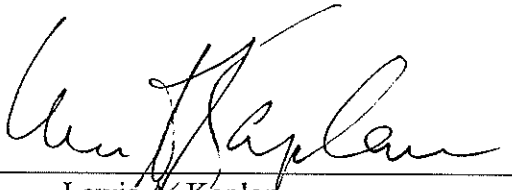
Memorandum Endorsement

Cerveceria Modelo, etc. v. CB Brand, etc., 21-cv-1317 (LAK)

The motion is granted to the extent that proposed expert testimony of Dr. Shellhammer is excluded for the reasons stated in excluding that of Mr. Kallenberger and denied in all other respects as inappropriate for *in limine* determination.

SO ORDERED.

Dated: February 28, 2023



Lewis A. Kaplan
United States District Judge